

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE

Budget Review Subcommittee on Justice and Judiciary

Minutes of the 2nd Meeting of the 2018 Interim

August 30, 2018

Call to Order and Roll Call

The 2nd meeting of the Budget Review Subcommittee on Justice and Judiciary of the Interim Joint Committee on Appropriations and Revenue was held on Thursday, August 30, 2018, at 10:00 AM, in Room 171 of the Capitol Annex. Senator Wil Schroder, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Wil Schroder, Co-Chair; Representative Jason Nemes, Co-Chair; Senators John Schickel and Whitney Westerfield; Representatives Daniel Elliott, Joseph M. Fischer, Jason Petrie, Brandon Reed, and Kevin Sinnette.

Guests: Kelly Stephens, Governmental Affairs Liaison, Administrative Office of the Courts (AOC); Damon Preston, Public Advocate, Department of Public Advocacy (DPA); and Sam Cox, Director, Law Operations Division, DPA.

LRC Staff: Zachary Ireland, Savannah Wiley, and Benjamin Thompson.

AOC Update of Tracking of Partial Fees Statewide

Ms. Stephens provided an update of AOC's accounts receivable system.

In response to questions from Representative Reed, Ms. Stephens stated that the decrease in state monies collected from FY 2013 to FY 2018 is at least partially due to the county attorneys' diversion program. Ms. Stephens said that seat-belt violations are now a \$25 fine without additional court costs. Circuit Court clerks have been very receptive to the updated accounts receivable system. Ms. Stephens noted that AOC's goal is to eventually roll out the new prepayment program to every county.

In response to a question from Representative Petrie, Ms. Stephens stated that if a defendant is consistent in making payments for fines, there would be no need for them to go to court.

In response to questions from Senator Schickel, Ms. Stephens said that a restitution ID is an internal control number for the AOC rather than a physical identification card. Ms. Stephens stated that restitution payment timelines are determined on a case by case basis.

DPA Perspective on Tracking Partial Fees Statewide

Mr. Preston and Mr. Cox presented on tracking partial fees from the DPA's viewpoint.

In response to questions from Chair Schroder, Mr. Preston stated that he believes the court system has improved on collection of indigency information. In the past, public defender fees were waivable and assessed at a standard \$50 per case, then raised to \$52.50 per case. The fee was a flat rate regardless of the charge the defendant was facing.

In response to questions from Representative Petrie, Mr. Preston noted that the problem with non-waivable fees is the mechanism for collection. He does not believe anyone should go to jail for failure to pay their lawyer. DPA studied the issue in the 1990s and determined the cost to hire a collection agency would be greater than the amount collected.

In response to questions from Representative Fischer, Mr. Preston said the affidavit of indigency involves debts, assets, ongoing obligations such as child support, and the defendant's financial status. The second factor that should be accounted for in determination of indigency is the case itself and how much in the normal market a similar case would cost a client. Some judges assess fees upon the appointment of a public defender, while most assess fees at the end of a case. The better way is to assess fees at the beginning of a case and address collection during sentencing. Ms. Stephens stated that a lot of judges struggle with how to apply public defender fees. AOC welcomes statutory guidance on the issue of public defender fees.

In response to questions from Chair Schroder, Mr. Cox said that the DPA has no method to track outstanding fees. Ms. Stephens stated that AOC may be able to track outstanding fees, though not likely at the individual level. Indigency is calculated on a sliding scale based on the Federal Poverty Line. If AOC is attempting to collect fees, the AOC does not have to report the debt as uncollected to the Department of Revenue.

In response to questions from Representative Petrie, Mr. Preston noted that he is not aware of any case where charges were filed for a falsified affidavit of indigency.

In response to questions from Senator Westerfield, Mr. Preston stated that he is not aware of any place in the country where public defenders are required to report their hours worked on a particular case, though rarely judges will ask the public defender how much time they have spent on the case.

There being no further business, the meeting was adjourned at 11:08 AM.